

These are the tentative rulings for civil law and motion matters set for Thursday, November 13, 2014, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, November 12, 2014. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0061478 U.S. Bank Trust, N.A. vs. Bracken, Theresa A.

Appearance required. Plaintiff is advised that its notice of motion must include notice of the court's tentative ruling procedures. Local Rule 20.2.3(C).

A motion for summary judgment in an unlawful detainer action may be brought at any time after the answer is filed upon five days notice. Code Civ. Proc. §1170.7. A party is entitled to a motion for summary judgment where there are no triable issues of fact. Code Civ. Proc. § 437c. The party seeking summary judgment bears the burden of showing there is no triable issue of material fact and that the party is entitled to judgment as a matter of law. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. The moving party has the burden of showing, by affidavit, facts establishing every element necessary to sustain a judgment in favor of the party. *Consumer Cause, Inc. v. Smilecare* (2001) 91 Cal.App.4th 454, 468. Once a plaintiff proves its prima facie case, the burden of proof shifts to the defendant to prove material facts. Code Civ. Proc. § 437c(p)(1).

To prevail in an action for unlawful detainer following a foreclosure, plaintiff must show that (1) plaintiff purchased the property upon foreclosure and title following the foreclosure sale has been duly perfected, (2) defendant was served with a three-day written notice to quit the property, and (3) defendant continued in possession after expiration of the notice. Code Civ. Proc. § 1161a(b)(3).

Plaintiff provides evidence that it purchased the property at a trustee's sale and said title was duly perfected. (Pltf. SSUMF 3, 4.) Plaintiff also shows that defendant was served with a notice to quit and vacate. (Pltf. SSUMF 5, 6.) Finally, Plaintiff submits evidence that defendant remains on the property after the expiration of the notice. (Pltf. SSUMF 7.) Accordingly, the burden shifts to defendant to establish a triable issue of material fact.

Defendant shall have the opportunity to present any evidence which may establish a triable issue of material fact at the time of the hearing. Cal. R. Ct., rule 3.1351(b).

2. M-CV-0062304 Koutney, Rebecca vs. Wenceslao, Cathy

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, such argument shall be held at 8:30 a.m. in Department 43:

The appearances of the parties are required on the Motion to Vacate the Judgment.

3. S-CV-0028118 Bartlett, Jason, et al vs. First American Realty & Finance

Defendant's Motion to Set Aside Default and Default Judgment is denied. The request for judicial notice is granted. Contrary to defendants' assertions, their request is untimely filed under the provisions of CCP §§473 and 473.5 since the request is brought more than 3 years after entry of the judgment.

4. S-CV-0029734 Hilburn, David, et al vs. Lund, John, et al

The motion to reopen case/motion for prejudgment interest is continued, on the court's own motion, to November 20, 2014 at 8:30 a.m. in Department 42. The court apologizes to the parties for any inconvenience.

5. S-CV-0030314 Belisle, David, et al vs. Centex Homes, et al

Ironshore's motion for judgment on the pleadings, Ironshore's motion for leave to propound form interrogatories, Centex's motion for leave to file first amended cross-complaint, and St. Paul's motion for summary judgment/summary adjudication are continued, on the court's own motion, to November 20, 2014 at 8:30 a.m. in Department 42. The court apologizes to the parties for any inconvenience.

6. S-CV-0031530 Moore, Gregory M vs. Wells Fargo Bank, N.A. et al

The motion to sever or bifurcate is dropped from the calendar at the request of the moving party. Defendant filed a notice of withdrawal of the pending motion on October 28, 2014.

7. S-CV-0031648 Hayes, James vs. State of California, et al

Plaintiff's Motion to Re-Open Discovery is denied. Plaintiff has not sufficiently established due diligence under CCP§2024.050(b)(2) to supporting granting the request.

8. S-CV-0032864 Kover, Beckie Jean, et al vs. Sutter Medical Center, et al

The motion for summary judgment is continued, on the court's own motion, to November 20, 2014 at 8:30 a.m. in Department 43 to be heard in conjunction with the two pending motions for summary judgment.

9. S-CV-0032934 Amsbaugh, Brian, et al vs. Kaiser Permanente, et al

The two motions to compel are continued, on the court's own motion, to November 20, 2014 at 8:30 a.m. in Department 40 to be heard in conjunction with the pending motion to amend deposition notice.

10. S-CV-0033228 Vogelsang, Janice vs. Crossmark, Inc., et al

The motion to quash is dropped from the calendar as no moving papers were filed with the court.

11. S-CV-0033242 Holmes, Bob vs. Weiler, Steve, et al

Defendant's Motion for Order Allowing Expert Deposition is granted in part. The request is granted as it pertains to the deposition of Dr. Russell Darnell. Defendant may depose Dr. Russell Darnell on a date, time, and at a location to be noticed by defendant, solely on the foundation and validity issues raised in Dr. Darnell's supporting declarations in opposition to the motion for summary judgment/summary adjudication. Defendant's motion is denied in all other respects.

The motion for summary judgment is dropped from the calendar as no moving papers were filed with the court.

12. S-CV-0033566 Thornton, Robert, et al vs. East West Partners, Inc., et al

The motion for class certification is continued to November 20, 2014 at 8:30 a.m. in Department 42 at the request of the moving party.

13. S-CV-0033748 Arnold, Clayeo C. vs. Carter, Wolden & Curtis, et al

The demurrer to the first amended complaint and the case management conference are continued, on the court's own motion, to November 20, 2014 at 8:30 a.m. in Department 42. The court apologizes to the parties for any inconvenience.

14. S-CV-0033972 Lacy, Carolyn, et al vs. Bank of America, N.A., et al

The motion for judgment on the pleadings is continued to December 18, 2014 awaiting the California Supreme Court's ruling on the request for depublication of *Mendoza v. JPMorgan Chase Bank, N.A.* (2014) 228 Cal.App.4th 1020.

15. S-CV-0034008 ARGA Properties vs. Gold Link Real Estate, et al

Defendants' Demurrer to the Complaint

Ruling on Request for Judicial Notice

The request for judicial notice is denied.

Ruling on Demurrer

The demurrer is sustained with leave to amend. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A review of the second cause of action shows that the complaint does not allege sufficient facts to support negligent performance of contract, negligence, action in violation of Civil Code section 2079.

Any amended complaint shall be filed and served on or before November 21, 2014.

Defendants' Motion to Strike the Complaint

Defendants' unopposed motion is granted. The references to attorney's fees are stricken as to the moving defendants.

16. S-CV-0034374 Tocchini, Phillip Corey vs. Olson, Mark F., DDS

Defendant's motion to bifurcate is granted to the extent it requests a bifurcation of the statute of limitations issue pursuant to CCP§597.5. Defendant's request for a limiting instruction regarding the admission of testimony and evidence during the phases of trial is denied at this time. Defendant's further request for a separate jury panel for each phase of the trial is denied.

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17. S-CV-0034534 Prah, Brett, et al. vs. Cabello, Marcelino, et al.

The petition for release of property is denied. Petitioner has failed to show respondent was served with notice of the petition and hearing as required under Civil Code section 8486.

18. S-CV-0034756 Mahlberg, Stephanie A. vs. City of Rocklin

The demurrer to the complaint is continued, on the court's own motion, to December 4, 2014 at 8:30 a.m. in Department 42 to be heard by the Honorable Charles D. Wachob.

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Defendant's Demurrer to the First Amended Complaint (FAC)Ruling on Request for Judicial Notice

Defendant's request for judicial notice is granted.

Ruling on Demurrer

The demurrer is sustained with leave to amend. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) Upon review, the fourth cause of action against the moving defendant appears to be deficient in two respects. The first relates to statutory interpretation and whether Civil Code §§51.7 and 52 allow for individual recovery against a supervisor. There is federal case law that suggests such a claim is allowed as a matter of law. (*Winarto v. Toshiba America Electronics Components, Inc.* (9th Cir. 2001) 274 F.3d 1276, 1290, fn. 16.) There is also, however, California case law that suggests such a claim cannot stand against a supervisor. (*Halgowski v. Superior Court* (2011) 200 Cal.App.4th 983, 996; *Jones v. Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1162.) The second deals with the insufficiency of the FAC in pleading facts to establish the moving defendant aided, incited, or conspired in the alleged sexual harassment. In light of these deficiencies, the demurrer is sustained. However, plaintiff is afforded leave to amend.

Any amended complaint shall be filed and served on or before December 1, 2014.

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